IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1195 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALE MOHAMMED KARIM BACHU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1195 of 2000

MR SH SANJANWALA, Sr.Advocate with Mr R S Sanjanwala and Mr Shamik S Sanjanwala for Petitioner No. 1-4

Mr AD Oza, G.P. for Respondent No. 1-2

Mr Dhaval Barot for Respondent No. 3 & 4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 29/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order passed under section 7 of the Smugglers and Foreign Exchange, Manipulators (Forfeiture of Property) Act, 1976 by respondent no.4 against the petitioners herein dated 14.2.2000, 16.2.2000, 15.2.2000 and 15.2.2000 at placed at Annexures 'H, "I", "J" and "K" Page no.33, 54, 73 and 92 respectively.

2. On receipt of the petition, rule was issued and in response to the service of notice of rule, Mr A D Oza, learned Government Pleader appeared for respondents no.1 and 2 and Mr Dhaval Barot, learned Addl.Central Govt.Standing Counsel appeared for respondents No.3 and 4. I have heard the learned Advocates for the parties and have perused the papers. It is not much in dispute that the orders in dispute were recorded by the competent authority and the events stated in the petition are also not in dispute.

3. At the stage of final hearing, during the course of hearing it has been pointed out that the present petition as well as Special Civil Application No.3436 of 1996 are cognate matters. The only difference is that in Special Civil Application No.3436 of 1996, mother of the detenu is the petitioner whereas in the present petition, four sons of the detenu are the petitioners. The order of detention which was the subject matter in the said Special Civil Application, is also an order of detention which is the subject matter in this petition. Therefore, both the matters stand on the same footing and on identical facts. Therefore, it is not much in dispute that when the aforesaid petition has been allowed on merit, this petition is also required to be allowed on merit on the same set of findings and reasonings and rule is required to be made absolute.

4. For the foregoing reasons, this petition is allowed for the reasons stated in the judgment/order passed in Special Civil Application No.3436 of 1996 today i.e. 29.3.2004. The impugned order passed under section 7 of the Smugglers and Foreign Exchange, Manipulators (Forfeiture of Property) Act, 1976 by respondent no.4 against the petitioners herein dated 14.2.2000, 16.2.2000, 15.2.2000 and 15.2.2000 at placed at Annexures 'H, "I", "J" and "K" Page nos.33, 54, 73 and 92 respectively, are quashed and set aside. Rule is made absolute accordingly. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp